

## **The Scope of Responsibilities of the National Council of the Slovak Republic within the Affairs of the European Union**

### **1. The Role of National Parliaments in the European Union**

National parliaments **are not part of the official EU institutional structure**, yet they play an important role in functioning of the EU.

The status of national parliaments is based on the concept of representative democracy at European level, as defined for the first time in the Constitution for Europe and incorporated, unmodified, into the Treaty of Lisbon in Article 10 of the Treaty on European Union ("TEU"). **At European level, the representative democracy manifests itself on two levels -** at the level of the European Parliament and at the level of national parliaments. The role of national parliaments was established by the Lisbon Treaty directly in the text of the Treaty in the form of Art. 12 TEU defining the way in which national Parliaments actively contribute to the functioning of the EU.<sup>1</sup> This provision references directly to the specific modification **in the Protocol (no. 1) on the role of national parliaments in the European Union and the Protocol (no. 2) on the application of the principles of subsidiarity and proportionality**, annexed to the Lisbon Treaty.

**The role of national parliaments has been strengthened by the Lisbon Treaty especially in the following areas:**

- timely and complete information of the national parliaments on the activities of EU institutions and future legislation [defined by the Protocol (no. 1) on the role of national parliaments in the European Union],
- involvement of national parliaments in monitoring the subsidiarity principle by setting up a mechanism for preliminary control or subsequent judicial review of compliance with the principle of subsidiarity [defined by the Protocol (no. 2) on the application of the principles of subsidiarity and proportionality],
- obligation to inform national parliaments on the implementation of policy in the area of freedom, security and justice and enshrining the participation of national parliaments in the control of Europol and evaluation of Eurojust,
- involvement of national parliaments in the discussion on the proposal to change the contractual basis of EU and participation of representatives of national parliaments in the Convention to be acted upon (Art. 48 TEU), including the possibility of a single national parliament to veto the simplified treaty revision consisting in the transition to qualified majority voting,
- involvement of national parliaments in monitoring the use of the flexibility clause (Art. 352 TEU),
- obligation of the Council of the European Union (the "Council") to inform national parliaments of applications for EU membership (Art. 49 TEU).<sup>2</sup>

A prerequisite for an active position of national parliaments in the EU is **the timely, complete and systematic information**. Art. 12 TEU establishes the obligation for the EU institutions to

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<sup>1</sup> Article 12 of the Lisbon Treaty

<sup>2</sup> SYLLOVÁ, Jindřiška – PÍTROVÁ, Lenka – PALDUSOVÁ, Helena et al. *Lisabonská smlouva. Komentář*. Lisbon Treaty. Commentary. Prague: C.H. Beck, 2010, p. 73- 74

inform national parliaments. All proposals of EU legislative acts are forwarded to national parliaments, i.e. proposals of the European Commission ( "the Commission"), initiatives from a group of Member States, initiatives from the European Parliament ("EP"), requests of the Court of Justice of EU, recommendations of the European Central Bank or requests from the European Investment Bank, as well as consultation papers issued by the European Commission, the annual legislative program and other instruments of legislative planning and policy strategies. The Lisbon Treaty confirmed the existing practice of direct communication between EU institutions and national parliaments, as initiated by the European Commission under the so-called Barroso initiative.

In addition to the information obligation the Lisbon Treaty also sets certain time limits with a goal for the national parliaments to establish the time frame to review the draft of the EU legislative act. The Lisbon Treaty **extends the period** between the forwarding of the draft of legislative act to the national parliaments and its inclusion in the provisional agenda of the Council from **6 to 8 weeks**.

In relation to deadlines Protocol (no. 1) on the role of national parliaments in the European Union also establishes that, between inclusions of the draft of legislative act in the provisional agenda of the Council and accepting the draft in the Council must pass a **period of ten days**.<sup>3</sup> The goal of this ten day period is to allow to inform the national parliament on the progress of negotiations.

Timely, complete and systematic information of national parliaments, including the provisions of the relevant periods is to enable the national parliaments, **on the basis of its own procedures** responsibly and on time, **formulate its opinion not only on the attitude that the national executive intends to apply at the meeting of the Council but also to the principle of subsidiarity**.

### ***Yellow and Orange Card***

The Treaty of Lisbon establishes a **new mechanism for monitoring compliance with the subsidiarity principle**. The principle of subsidiarity is based on Art. 5 section 3 TEU, which provides that *"Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as **the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.**"*<sup>4</sup> The subsidiarity control mechanism is therefore applicable in areas where the EU has shared competence with the Member States. It does not apply to areas where the EU has exclusive competence (e.g. Common commercial policy) or on non-legislative documents, such as announcements or Green Papers.

When assessing the compliance of the draft of EU legislative act with the subsidiarity principle, it is needed to answer the question if or not the draft has transnational aspects that nation states themselves cannot satisfactorily resolved at national, regional or local level; if it brings benefits at European level and whether the action or inaction of a Member State is contrary to the objectives of the EU.

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<sup>3</sup> Article 4 of the Protocol (No. 1) on the Role of National Parliaments in the European Union

<sup>4</sup> Article 5 (3) of the Treaty on European Union

The detailed regulations for parliamentary control of the subsidiarity principle is specified **in the Protocol (no. 2) on the application of the principles of subsidiarity and proportionality**. The purpose of these standards is that those principles are respected at the stage of preparation and presentation of a draft of legislative act. The protocol establishes the obligation of EC to justify the submitted drafts of legislative acts from the perspective of subsidiarity and proportionality principle. All legislative drafts must therefore contain a detailed report to assess whether these principles were respected.

The new mechanism of monitoring compliance with the subsidiarity principle, is known as **“The mechanism of yellow and orange card”**. Each national Parliament may, within **eight weeks** of the referral of the draft of legislative act, send to the Presidents of the EP, the Council and the European Commission so called: **reasoned opinion**. National parliaments in their reasoned opinion must explain why they consider the draft of legislative act not to be in accordance with the principle of subsidiarity. EC shall respond to all reasoned opinions received from national parliaments. However, the formal effect of reasoned opinions on the legislative process **depends on the number of submitted opinions**. For the purpose of calculating these thresholds, to each national parliament are assigned two votes (i.e. **unicameral parliaments have two votes**, bicameral parliaments have one vote for each chamber). The total number of votes is now 56 (twice the number of Member States).

**The Yellow Card procedure** applies if the reasoned opinions submitted correspond to at least **one third of the votes** assigned to the national Parliaments (i.e. 19 votes) – or one quarter (i.e. 14 votes) if the draft legislative act is submitted within the area of freedom, security and justice. Applying this procedure the Commission shall review its proposal. On the basis of the review, the Commission may decide to maintain, amend or withdraw the proposal. The Commission must give reasons for its decision. Until now, the yellow card procedure has been triggered twice; in relation to the Commission's proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services (the so-called "Monti II-proposal") and the yellow card procedure was triggered in regard to the Commission's proposal for a Council Regulation on the European Public Prosecutor's Office (also called the “EPPO-proposal”). In both cases the European Commission after a careful assessment of the reasoned opinions received from national parliaments did not find that the principle of subsidiarity had been breached. However the Monty II proposal was eventually withdrawn by the EC.

**The Orange Card procedure** is triggered if the reasoned opinions submitted constitute a **majority of the votes** assigned to national Parliaments (i.e. min 29 votes), and the draft is submitted under the ordinary legislative procedure. This means that the Commission must review the proposal. On the basis of the review, the Commission may decide to maintain, amend or withdraw the proposal. If the Commission decides to maintain its proposal, it must justify, in a reasoned opinion to the European Parliament and the Council, why the proposal complies with the principle of subsidiarity. In such circumstances the European Parliament and the Council shall consider whether the proposal complies with the principle of subsidiarity before concluding the first reading. If a simple majority of the members of the European Parliament or 55% of the members of the Council shall find that the proposal breaches the principle of subsidiarity, the proposal will not be given further consideration. The Orange Card procedure has not been applied yet.<sup>5</sup>

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<sup>5</sup> European Commission. *Mechanismus kontroly subsidiarity*. Subsidiarity Control Mechanism [online] available at: <[http://ec.europa.eu/dgs/secretariat\\_general/relation/relation\\_other/npo/subsidiarity\\_sk.htm](http://ec.europa.eu/dgs/secretariat_general/relation/relation_other/npo/subsidiarity_sk.htm)>, verified on 2016-02-29

The mechanism of yellow card and orange card are ways to *ex ante* control on compliance of EU draft legislative act with the principle of subsidiarity. Except those blocking tools, national parliaments can initiate a judicial review of compliance with the principle of subsidiarity, to the Court of Justice of the EU on launching of the special proceedings on the invalidity of a legislative act. **Action to the Court of Justice in the case of breaching the principle of subsidiarity represents the *ex post* control on compliance of a legislative act with the principle of subsidiarity.**

### ***Political Dialogue***

In 2006, the EC introduced into practice a new form of cooperation with national Parliaments so-called “**political dialogue**” with the goal of improving the position of national Parliaments and to reinforce parliamentary and democratic dimension of the EU. The Political dialogue is an instrument which aims to eliminate the democratic deficit through greater involvement of national Parliaments in the legislative work and the process of forming the EC policy.

Unlike the mechanisms of monitoring compliance with the subsidiarity principle, **it is not formally based on a contractual basis**. Political dialogue is currently used in parallel with the early warning system and it is another possible form of communication between national Parliaments and the European Commission.

If a national Parliament came to the conclusion that the EU draft legislative act violates the principle of subsidiarity, it may send to the relevant EU institutions reasoned opinion stated above. However, if a national Parliament has other objections to the act (**e.g. the substance of the proposal**), it may begin a political dialogue with the European Commission. In the framework of the political dialogue, national Parliaments can send opinions to the Commission which endeavors to reply **within three months**. Opinions can concern Commission documents or policy areas for which the Commission is competent. Often a political dialogue will enable the EC to consider the major concerns of national Parliaments on the substance of proposals legislative acts and it gives room for possible negotiations with the Council and the EP in order to adapt the proposal to opinions of the national Parliaments. Also in cases of absence of the necessary quorum to trigger a yellow or orange card procedure, the Commission replies to the reasoned opinions under the political dialogue.

In practice, the political dialogue is conducted in three basic forms:

- **through parliamentary diplomacy at EU level** - through bilateral and multilateral discussions and exchanges of views on inter-parliamentary meeting on EU soil [E.g. A Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union ("COSAC")]
- **through written communication between national parliaments and the European Commission,**
- **through less formalized communication channels** (e.g. contacts and meetings between European Affairs Committees of national Parliaments and members of the EC).<sup>6</sup>

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<sup>6</sup> Department for European Affairs of the Chancellery of the National Council of the Slovak Republic. *Podkladový materiál na stretnutie vedúcich kancelárií parlamentov Európskej únie*. Preliminary material for the Heads of Parliament Chancelleries of the European Union meeting. ( 12.-13. March 2015, Rome) Bratislava: 2015, pg. 2

## *Green Card*

The idea of a green card originally **derived from COSAC's message from June 2013**, which calls for a greater involvement of national Parliaments in the legislative process at EU level. The phrase "green card" for the first time appeared in conclusions of COSAC in December 2014, when the majority of national Parliaments endorsed this new tool. Its contribution to the development of the Institute of the Green Card had also **lower house of the bicameral parliament of the Netherlands**, who presented the idea of a green card in its report entitled Progress in Europe: the role of the Dutch Second Chamber and the national parliaments in the European Union. This initiative was further supported by the Parliament of the Kingdom of Denmark and the upper chamber of Parliament of the United Kingdom of Great Britain and Northern Ireland. As a result of these efforts, on January 19th, 2015 representatives of the European Affairs Committees of 14 chambers of national Parliaments and the EP representatives met to discuss possible forms and procedures for the implementation of this new instrument. Subsequently, the Latvian Presidency of the Council included the topic of green card into its portfolio within the parliamentary dimension of the Presidency. Shortly after, appeared an invitation addressed to the Luxembourg Presidency of the Council for developing the mechanism of the Green Card was realized in a form of a special **working group** to reinforce the political dialogue by introducing a green card and streamlining the mechanism for granting the yellow card. This ad-hoc working group confirmed on October 30th 2015 in Luxembourg, that the majority of national Parliaments support the Green Card, however their views on the scale of this tool and the procedures connected with it vary.

The Green Card is one of the possible forms of coordination between national Parliaments. It is a constructive tool building on political dialogue described above. **The Green Card is the possibility for pro-active involvement of national Parliaments in policy-making and legislation at EU level, through submitting of legally non-binding proposals and incentives to EC.** In practice, it is up to the European Commission how it responds to a specific Green Card.

In other words, contractual basis of the EU does not obligate the European Commission to adopt a policy proposals or legislative acts delivered by national parliaments through the Green Card. The power of the Green Card lies in the fact that it may have the potential to develop political pressure on the activity of European Commission in certain area and it could also encourage national Parliaments to greater involvement in policy-making and in legislative process at the EU level.<sup>7</sup>

The pilot Green Card was initiated by the European Union Committee of the House of Lords of the United Kingdom of Great Britain and Northern Ireland in May 2015, on addressing the issues of food waste. This initiative was joined by the Slovak Parliamentary Committee on European Affairs by resolution no. 195 from June 25th, 2015.

## *Interparliamentary Cooperation within the EU*

Interparliamentary cooperation at EU level is based on Article 9 of the Protocol (no. 1) on the role of national Parliaments in the European Union annexed to the Treaty of Lisbon, which gives to the EP and national Parliaments the mandate to define the concept for interparliamentary cooperation in the EU. As stated in the Article 9 of the Protocol (no. 1) on

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<sup>7</sup> Department for European Affairs of the Chancellery of the National Council of the Slovak Republic. *Zelená karta. Smerom k posilnenému politickému dialógu*. Green Card. Towards the Enhanced Political Dialogue. Bratislava: 2015, pg. 3-8

the role of national Parliaments in the European Union *"the European Parliament and national Parliaments shall together determine the organization and promotion of effective and regular interparliamentary cooperation within the European Union"*.<sup>8</sup>

Specific regulations are introduced in two documents adopted by the **Conference of Speakers of EU Parliaments**:

- **The rules and procedures for the Conference of Speakers of EU Parliaments** adopted in Rome in 2000 and revised in Stockholm in 2010. This document is known as so-called The Stockholm Guidelines for the Conference of Speakers of the EU Parliaments.
- **Rules of interparliamentary cooperation in the European Union** adopted at the Conference of Speakers of EU Parliaments in Hague in 2004, amended in Lisbon in 2008.<sup>9</sup>

One of the main objectives of interparliamentary cooperation in the EU is **to promote the exchange of information and best working practices** between the national parliaments and European Parliament with a view to reinforce parliamentary control, influence and scrutiny at all levels. Also the objective of interparliamentary cooperation in the EU is to ensure effective exercise of parliamentary competences in EU matters (in particular in the area of monitoring the principles of subsidiarity and proportionality) and to promote cooperation with parliaments from third countries.

The interparliamentary cooperation in the European Union carried out through the following structures:

- **The Conference of Speakers of EU Parliaments** - it's the association of Speakers of the EU Parliaments and the President of the EP. Candidate countries have observer status. The goal of this platform is to oversee the interparliamentary cooperation in the EU.
- **The Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC)** - it's a conference of representatives of the Parliamentary Committees for Union Affairs, Members of the European Parliament and observers from the candidate countries. This forum provides a platform for exchange of information and best practices.
- **Joint meetings on topics of common interest** - the national parliament that holds a current Presidency of the Council may in cooperation with the EP hold joint meetings on matters of common interest such as. Joint meetings of the Substantive Committees of Parliaments of the EU Member States and European Parliament.
- **Substantive Committee Meetings** - meetings between partner Substantive Committees of Parliaments of the EU Member States and the European Parliament are to exchange views on the different EU policies on the basis of their substantive scope.
- **Meeting of Heads of Parliaments Offices of EU Member States** - the head of the office or other authorized staff of national Parliaments meet regularly in order to prepare the draft agenda and documents for discussion at the Conference of Speakers

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<sup>8</sup> Article 9 of Protocol (No. 1) on the Role of National Parliaments in the European Union

<sup>9</sup> The Rules of Procedure of the Conference of Speakers of EU Parliaments and Rules of Interparliamentary Cooperation in the European Union are available in English at <<http://www.ipex.eu/IPEXL-WEB/euspeakers/getspeakers.do>>, verified on 2016-02-29

of the EU Parliaments. The head of office or other authorized staff of national Parliament may also meet for purposes of other necessary mutual consultation.

- **Permanent representatives of national Parliaments in the EP** - permanent representatives of national Parliaments in Brussels allow regular exchange of information between national Parliaments and the European Parliament and the national parliaments themselves.<sup>10</sup>

In addition to the above, in 2012 in Warsaw, Speakers of national Parliaments have decided, that in accordance with Protocol No. 1 on the role of national Parliaments in the EU, establish an **Interparliamentary Conference for the Common Foreign and Security Policy (CFSP) and the Common Security and Defense Policy (CSDP)**. The first meeting took place on September 8th to 11th, 2012 at Paphos (Cyprus). This meeting approved the Rules and Procedure of the Conference, presented the priorities and strategies of the EU Common Foreign and Security Policy and the Common Security and Defense Policy, and held a policy debate on the EU and the Arab Spring. It emphasized the need to intensify the democratic action in these EU policies by promoting a more systematic, regular and timely exchange of information on various aspects and consequences of these policies, both at national and European level, as well as the need for enhanced Parliament's role.

In April 2013, Speakers of national Parliaments decided to create another interparliamentary conference - **The Interparliamentary Conference on Stability, Economic Coordination and Governance in the European Union**. The first meeting took place in Vilnius on October 16 to 17, 2013. The inaugural meeting discussed in particular the objective, purpose and vision of emerging conference and other substantive issues relating to the post-crisis economic governance, Union banking and financial integration within the EU.

**The instruments of interparliamentary cooperation in the EU, include in particular:**

- **IPEX Platform** - Interparliamentary EU Information Exchange<sup>11</sup> - is a platform for mutual electronic exchange of information and documents between the national Parliaments of member and candidate countries and EU institutions. IPEX is a source of information about the current status of assessment of the EU legislative proposals to national parliaments, while allowing to actively monitor the progress of the control procedures and to inspect related documents of national Parliaments.
- **Information, Research and Documentation** - national Parliaments should exchange information, research material and documentation, in particular through the COSAC and the European Centre for Parliamentary Research and Documentation (ECPRD).<sup>12</sup>

### ***Parliamentary Dimension of the Presidency of the Council of European Union***

The Presidency of the Council represents for the EU Member States one of the most important and most demanding tasks resulting from membership. Article 16 (9) of the Treaty on European Union provides that **the Presidency of Council configurations**, other than that of Foreign Affairs, shall be held by Member State representatives in the Council **on the basis of**

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<sup>10</sup> IPEX. *Guidelines for Inter-Parliamentary Cooperation in the European Union*. [online]. Available at: <<http://www.ipex.eu/IPEXL-WEB/euspeakers/getspeakers.do>>, verified on 2016-02-29

<sup>11</sup> IPEX Platform is available at : <<http://www.ipex.eu>>

<sup>12</sup> IPEX. *Guidelines for Inter-Parliamentary Cooperation in the European Union*. [online]. Available at: <<http://www.ipex.eu/IPEXL-WEB/euspeakers/getspeakers.do>>, verified on 2016-02-29

**equal rotation**, in accordance with the conditions established in accordance with Article 236 of the Treaty on the Functioning of the European Union. The Presidency is conducted by a group of three Member States over a period of 18 months ("**Trio Presidencies**"). Trio Presidency is created based on the principle of rotation between the Member States, considering their diversity, geographical location and geopolitical terms. The Trio implements a joint program, and each member of the trio holds in a specific order the Presidency of the Council of the EU **for six months**. Other members of the Trio shall assist in all functions based on a common program. The Kingdom of the Netherlands will create a Trio Presidency with the Slovak Republic and Malta in the period from January 1st 2016 to June 30th 2017. **Slovak Republic will take over the Presidency of the Council of EU from July 1st to December 31st 2016.**

Each **Presidency of EU Member States in the Council** includes in addition to events at the executive level also so-called "**parliamentary dimension**" consisting in a number of large-format meetings between representatives of the national Parliaments of 28 Member States (in case of bicameral Parliaments representatives of both chambers), candidate and partner countries, as well as the EP and other invited guests.

In this context, it is a **duty** of the National Parliament of the Member State holding the Presidency of the Council, **to organize** more of the above events, namely **COSAC (president and plenary), Interparliamentary Conference on Common Foreign Policy and Security Policy and on Common Security and Defense Policy of the EU, Interparliamentary Conference on stability, economic coordination and governance in the EU.**

If the country is holding the Presidency of the Council in the second term (such as the Slovak Republic), the National Parliament has **an obligation to organize also a Meeting of Heads of Parliaments Offices of EU Member States and a Conference of Speakers of EU Parliaments in the next six months**. Besides the above mentioned interparliamentary conferences the Parliament of the Presidency state may also organize other interparliamentary meetings, as appropriate, e.g. session of Substantive Committees.

**The Parliament of the Member State holding the Presidency of the Council, provides organizational and logistical aspect** and content of all these interparliamentary conferences and meetings, and these conferences and meetings **are chaired by chairmen of relevant committees of the national Parliament**. Official language is generally English and French, if necessary also the official language of the organizing country. The exception is the plenary COSAC, which is translated into all official EU languages.

Currently, within the **parliamentary dimension of the Slovak Presidency of the Council is expected organization of 7 large-format multi-day interparliamentary events** at the level of representatives of legislative bodies (**5 in 2016 and 2 in 2017**), with the expected number of guests ranging from 150 to 300 per event, as a realization of several other meetings.

In addition, adopting changes within the guidelines of IPEX has introduced **a rotating annual Presidency of the IPEX Board**. IPEX Board is chaired by the national Parliament holding the previous Presidency of the Conference of Speakers of the European Union Parliaments (i.e. parliament of the country holding the Presidency of the Council of the EU in the second term). Following the Slovak Presidency of the Council in the second half of 2016 **the National Council takes over the Chair of the IPEX Board during the Conference of Speakers of European Union Parliaments in April 2017 in Bratislava**. Composition of the Board and the appointment of its Chair will be agreed on at the Meeting of Heads of

Parliaments Offices of EU Member States in February 2017 in Bratislava. According to the IPEX Guidelines, the Board chairman shall be the Secretary General of the presiding Parliament (in the case of the National Council it is **the Head of the Office of the National Council**).

## **2. The Cooperation of the National Council of the Slovak Republic and the Government of the Slovak Republic within the Affairs of the European Union**

The current legislation of relations between the National Council and the Government concerning the EU matters is contained **in the Constitutional Act. 397/2004 Coll.** on cooperation between the National Council of the Slovak Republic and the Government of the Slovak Republic in matters concerning the European Union and **in the Rules of Procedure**. A more detailed definition is contained **in the formation of opinions on proposals of EU acts and the stage of coordination of implementing the EU policies** approved by the Slovak Government Resolution no. 627 from October 27th 2013.<sup>13</sup> This document sets the rules for cooperation between central government authorities and other authorities and procedural action in creation of the Slovak Republic's opinions on draft legislative acts and other acts of the EU.

### ***Constitutional Law No. 397/2004 Coll.***

On June 24th 2004, the National Council approved the draft of Constitutional Act no. 397/2004 Coll., which **establishes the position of the National Council in a model of strong control powers** of the National Council over the Government. It is a framework regulation of relations between branches of legislative and executive power in EU affairs. This Constitutional Act has not been amended, and so some of its provisions do not comply with the terminology of the Treaty of Lisbon, however it does not affect the real position of the National Council of the Slovak Republic in the matters of the EU.

The relationship of the National Council and the Government in matters of the EU has basically two levels - **the obligation of the Government to submit specified materials and the powers of the National Council to approve opinions of the Slovak Republic**. The Government of the Slovak Republic or an authorized member of the Government shall submit to the National Council of the Slovak Republic drafts of legally binding acts and other acts of the European Union to be discussed by representatives of the Governments of the Member States of the European Union, and shall inform the National Council on other issues concerning the Slovak Republic's membership in the European Union. The National Council has been provided with these proposals not only by the Government but also in so-called Barroso initiative they are sent directly to national parliaments.<sup>14</sup> Beside that the Government shall submit to the National Council **a draft of the position of the Slovak Republic** on legally binding acts and other acts of the European Union, together with an assessment of their impact on the Slovak Republic.<sup>15</sup>

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<sup>13</sup> The Government of the Slovak Republic. *Systém tvorby stanovísk k návrhom aktov EÚ a stav koordinácie realizácie politík EÚ*. System of the Opinion Formation regarding Drafts of the EU Acts and the Coordination State of EU Policies Implementation [online]. Available at: <<http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=22946>>, verified on 2016-02-29

<sup>14</sup> The mentioned drafts of the EU acts are published in the so-called European Affairs Tracking System. <http://www.nrsr.sk/ssez/>

<sup>15</sup> Art. 1 of the Constitutional Act no. 397/2004 Coll. on cooperation of the National Council of the Slovak Republic and the Slovak Republic in the European Union Affairs

**The National Council of the Slovak Republic has a power (possibility) to approve the positions of the Slovak Republic** concerning the drafts of legally binding acts and other acts of the European Union to be decided upon by representatives of the Governments of the Member States of the European Union. According to this legislation the National Council has the right, but not the obligation, to comment on the Government's positions on legally binding acts of the EU. The National Council may (but does not have to) also approve the positions of the Slovak Republic concerning other issues of the European Union if requested by the Government or by at least one fifth of the Members of National Council of the Slovak Republic. Also in this case the National Council has the right, but not the obligation to comment on other issues of the EU.

**Constitutional law no. 397/2004 Coll. establishes legal effects for cases where the National Council:**

- approves the proposal of the position of the Slovak Republic;
- fails to express its opinion on the proposal of the position of the Slovak Republic within two weeks of the submission;
- does not approve the proposal of the position of the Slovak Republic nor other position in the same matter.

**Shall the National Council of the Slovak Republic approve a proposal of a position, it shall be binding** for the member of the Government representing the Slovak Republic in the bodies of the European Union. An authorized member of the Government may deviate from the position of the Slovak Republic or from the position proposal but only when unavoidable and necessary and with due consideration for the interest of the Slovak Republic; in such case the member of the Government shall without delay inform the National Council of the Slovak Republic of his/her action and explain the reasons for taking this action. The member of the Government may thereafter ask the National Council to alter the position of the Slovak Republic.<sup>16</sup>

Shall the National Council of the Slovak Republic **fail to express** its opinion on a proposal of the position of the Slovak Republic **within two weeks of its submission**, an authorized member of the Government shall act on the position proposal of the Slovak Republic.<sup>17</sup> The opportunity not to express an opinion on the position proposal ("**the Principle of Silence Procedure**") is a demonstration of possibilities to consider the position and "silently" accept or not to discuss nor explicitly accept the position. If the National Council decides not to express its opinion on a proposal of the position of the Slovak Republic, the Government shall act in the European Union on the position proposal of the Slovak Republic prepared and submitted to the National Parliament. This option is used for example in marginal issues where the negotiation and approval would only be unnecessary procedural burden on the National Council at the expense of broader issues with wider national and political impact.

Shall the National Council of the Slovak Republic **fail to approve** a proposal of the position of the Slovak Republic **without approving another position on a related matter**, an authorized member of the Government shall act on the (submitted) position proposal of the

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<sup>16</sup> Art. 2 (5) of the Constitutional Act no. 397/2004 Coll. on cooperation of the National Council of the Slovak Republic and the Slovak Republic in the European Union Affairs

<sup>17</sup> Art. 2 (4) of the Constitutional Act no. 397/2004 Coll. on cooperation of the National Council of the Slovak Republic and the Slovak Republic in the European Union Affairs

Slovak Republic.<sup>18</sup> This principle is analogous to the so-called “**Principle of Constructive Disagreement**”.

Additionally, based on the report submitted by the Government, the National Council of the Slovak Republic shall **at least once a year discuss all issues relating to the Slovak Republic’s membership** in the European Union and approve any recommendations for the Government to follow in the forthcoming period.<sup>19</sup>

### **3. Committee of the National Council of the Slovak Republic for European Affairs**

According to the Constitutional Act no. 397/2004 Coll., **the National Council of the Slovak Republic may authorize by law a committee to exercise its powers within the EU affairs.** This means that if the National Council decides not discussed at the meeting of the National Council all European agenda will, it may for this purpose set up a new committee or delegate the power to another, already existing committee. For this purpose, initially temporary by the resolution of the National Council of the Slovak Republic no. 893 from April 29th 2004 and later permanently on Rules of Procedure was established the **Committee of the National Council of the Slovak Republic for European Affairs.**

The Committee for European Affairs was by legislation created as **a powerful committee.** According to the provision of the Constitutional Act no. 397/2004 Coll., if the National Council (the Committee for European Affairs) approve the draft of the position (mandate) of the Government, an authorized member of the Government shall act on that draft position (**mandate**) in representing the Slovak Republic in the relevant EU institutions. Since the Committee for European Affairs does not perform only the powers defined by the Constitutional Act no. 397/2004 Coll. (**approvals of mandates for Government members**), but it’s also by The Rules of Procedure delegated with additional powers of national parliaments (e.g. **Assessment of compliance of EU draft legislative acts with the principle of subsidiarity**, including the adoption of reasoned opinions), it can be stated that the Slovak model is so-called **Mixed System of Monitoring the EU affairs in the National Parliament.**

The discussion of EU matters in the Committee for European Affairs is governed by **§ 58a and § 58b of the Act on the Rules of Procedure**, where the rules of procedure and proceedings of this committee are defined further.

In addition, the above provisions also define the composition of the committee, voting procedures and the obligations of the Government to this committee. The new § 58b of the Act on the Rules of Procedure regulates the procedure for negotiating and taking legal action against violation of the principle of subsidiarity by a legislative act of the EU.

#### ***Composition of the Committee***

The National Council of the Slovak Republic elects the chairman and the members of the Committee for European Affairs **on the basis of proportional representation** of political parties and movements, the members of which hold parliamentary seats in the respective electoral term.

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<sup>18</sup> Art. 2 (4) of the Constitutional Act no. 397/2004 Coll. on cooperation of the National Council of the Slovak Republic and the Slovak Republic in the European Union Affairs

<sup>19</sup> Art. 2 (6) of the Constitutional Act no. 397/2004 Coll. on cooperation of the National Council of the Slovak Republic and the Slovak Republic in the European Union Affairs

The principle of proportional representation is applied because the Committee for European Affairs adopts binding positions and recommendations for representatives of the Slovak Republic in the EU institutions, and therefore it is necessary for all political parties and political movements represented in the National Council to decide on the position.

The Committee for European Affairs is the only committee of the National Council, where each of its members has one **alternate member**. Alternate members are elected by the National Council as well. The reason is to ensure the permanent functioning of the Committee and the widest possible coverage of the professional agenda of the Committee.

An alternate member may attend the meeting of the Committee for European Affairs for the member, **after the member notifies the committee chairman**. In that case, the alternate member is counted among present committee members and shall vote at the meeting of the Committee for European Affairs. If the alternate member attends a meeting of the Committee for European Affairs together with members of the Committee to whom he/she is an alternate member, or without member's notification to the Committee Chairman on the participation of the alternate member, the alternate member shall not be counted in the number of present members and shall not be allowed to vote. An alternate member for the chairman or vice-chairman of the Committee for European Affairs is attending the Committee meeting just as a committee member.<sup>20</sup>

**Members of the European Parliament elected in the territory of the Slovak Republic may participate in a meeting of the Committee for European Affairs, and may speak on the discussed matter, if they ask to speak, but they have no right to vote at this meeting.**

### *Scope of Responsibilities of the Committee*

#### **The Committee for European Affairs:**

- a) discusses drafts for legally binding acts and other acts of the European Union,
- b) approves the position of the Slovak Republic on drafts of legally binding acts under section a), which are to be discussed by the institutions of the European Union,
- c) assesses the compliance of draft legislative acts of the European Union with the principle of subsidiarity, including the approval of reasoned opinions,
- d) discusses proposals on taking legal action against violation of the principle of subsidiarity by a legislative act of the EU,
- e) discusses reports and information submitted to the National Council by the Government and the Government members and acts submitted to the National Council by the institutions of the European Union,
- f) may request opinions on the drafts from the other committees of the National Council under sections a) and b),
- g) reports to the National Council under sections a) to f).<sup>21</sup>

The National Council, however, may reserve the decision on the matters referred to in sections a) to c). Reflected upon this, **the National Council keeps the possibility, in cases of**

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<sup>20</sup> § 58a (2) of the Act of the National Council of the Slovak Republic no. 350/1996 Coll. on Rules of Procedure of the National Council of the Slovak Republic as amended by the Act no. 399/2015 Coll.

<sup>21</sup> § 58a (3) of the Act of the National Council of the Slovak Republic no. 350/1996 Coll. on Rules of Procedure of the National Council of the Slovak Republic as amended

**particular importance, to reserve the decision on the matters delegated to the competence of the Committee for European Affairs.**

Given the above, **the Committee for European Affairs may request other committees of the National Council of the Slovak Republic (i.e. The Substantive Committees) to submit their positions** on drafts of legally binding acts of the European Union, and their opinion to the draft position of the Slovak Republic on the drafts of legally binding acts of the European Union. The cooperation of the Committee for European Affairs and the Substantive Committees **on the substance of drafts** of legally binding acts of the European Union and the draft position of the Slovak Republic on these drafts is a common practice and allows to consider a wider range of professional and political views. The Committee for European Affairs shall request the opinion of a Substantive committee generally when the responsible ministry declares a proposal as a priority (high priority) in terms of the interests of the Slovak Republic. For example, if a proposal of a legally binding act of the EU, of priority importance, contains finance matters, the Committee for European Affairs may ask the Committee of the National Council of the Slovak Republic on Finance and Budget for an expert opinion on the substance of this draft. If the opinion of the Substantive Committee was delivered to the Committee for European Affairs, it shall be considered in further discussions on the draft.

The Rules of Procedure do not specify at what stage of the decision-making process at EU level shall the National Council (The Committee for European Affairs) deal with the proposals, leaving this decision on the National Council (The Committee on European Affairs), as well.

The Chairman of the Committee for European Affairs shall continuously place the draft legislative acts of the EU, which have been delivered to the committee, on the draft agenda, generally so, that the Committee could, in the case of draft legislative acts examine compliance with the principle of subsidiarity within eight weeks of their delivery. In practice, this means that the Committee for European Affairs is kept regularly informed on new proposals of legislative acts of the EU through a table with new proposals. The table contains a brief content of the proposal, the closing date for assessing compliance with the principle of subsidiarity, information about the importance of the proposal in terms of the interests of the Slovak Republic and the recommendation for the Department of the European Affairs Office of the National Council whether the Committee for European Affairs shall further consider the draft and in what form.

As explained above, the Treaty of Lisbon established the right of national parliaments to monitor, via **the early warning system, the subsidiarity principle in draft legislative acts of EU**. Since the National Council has delegated its powers in EU matters to the Committee for European Affairs, only this committee has the opportunity to monitor the compliance of the draft legal acts of the EU in terms of their compliance with the principle of subsidiarity. If the National Council (The Committee for European Affairs) in eight weeks deadline, set by the Treaty of Lisbon, resolves that a specific draft legislative act of the EU does not comply with the principle of subsidiarity, the National Council shall send to the competent institution of the EU **a reasoned opinion** stating why it supposes that the draft is violating the principle of subsidiarity. If the submitted reasoned opinions comply with the required majority of the votes allocated to national parliaments, **a mechanism of the yellow or orange card** (described in the first part of this chapter) shall apply.

Except these blocking tools, national parliaments may also initiate a judicial review of compliance with the principle of subsidiarity to the Court of Justice of the European Union to start a specific type of proceedings on invalidity of a legislative act. The Committee for European Affairs or at least one fifth of Members of the National Council may in writing apply to the National Council to **act by bringing an action for infringement of the principle of subsidiarity by a legislative act of the EU**. The draft of the complaint must contain the exact wording of the complaint, on which shall the National Council act. The draft of the complaint is submitted to the Speaker of the National Council, no later than fifteenth days before the deadline for bringing proceedings. Other essentials are further regulated by § 58b of the Act on the Rules of Procedure.

### ***Preliminary Position***

The aim of the preliminary position is on the introduction of the legislative process at the EU level **to define the starting positions** of the Slovak Republic and identify national priorities for the next debate. The preliminary position is a starting point document for a representative of the Slovak Republic in discussions within the Council working groups. It is prepared by a relevant central state-administration authority and approved by the relevant departmental coordination group (i.e. an expert group that coordinates the decision-making process in the EU matters at the ministry or another central state administration authority level).

The Government or an authorized member of the Government **no later than four weeks after receipt of the draft** legislative act and the draft legislative act of EU shall submit to the Committee for European Affairs a preliminary opinion on the draft proposal. The Preliminary position is the positional paper of the Government (the Ministry), which contains the primary evaluation of the submitted proposal at an early stage of the legislative process at EU level.

The Committee for European Affairs may agree with the assessment that the draft proposal complies with the principle of subsidiarity in the preliminary position and identify and express consent with the presented preliminary position, or otherwise, may order to the member of the Government to promote a different position in the Council (e.g. object infringement of the principle of subsidiarity).

### ***Position of the Slovak Republic***

The position of the Slovak Republic is **a national position for a discussion or a decision on the Council meetings**. The draft position of the Slovak Republic for the Council meetings are prepared by responsible department based on previously processed materials (a preliminary position, position and instruction) and on the results of negotiations in the Council working groups, the Council committees and the Committee of Permanent Representatives (COREPER). The draft position is approved by the designated minister or a leader of another central state-administration authority, given that prior to the approval of the draft it is first discussed at the meeting of the Commission for European Affairs, which operates at the Ministry of Foreign and European Affairs of the Slovak Republic and is the expert interdepartmental coordinating body in the area of position forming towards draft legislative acts of the EU.

The Government or an authorized member of the Government shall, **well in advance, submit to the Committee for European Affairs a draft position** of the Slovak Republic on a proposal of legally binding acts and other acts of the EU, and in this respect is required to attend a meeting of the committee and inform the committee.<sup>22</sup>

**Shall the Committee for European Affairs approve a draft position of the Slovak Republic, it is binding for the member of the Government** representing the Slovak Republic in the relevant bodies of the European Union. A member of the Government may deviate from the position of the Slovak Republic but only when unavoidable and necessary and with due consideration for the interest of the Slovak Republic; in such case the member of the Government shall without delay inform the Committee for European Affairs and explain the reasons for taking this action. A member of the Government may ask the Committee for European Affairs for a change of position of the Slovak Republic.<sup>23</sup>

Shall the Committee for European Affairs **fail to express** its opinion on a draft position of the Slovak Republic **within two weeks of the submission**, a member of the Government is bound by the (submitted) draft position of the Slovak Republic.<sup>24</sup> The opportunity not to express an opinion on the draft of the position (“**the Principle of Silence Procedure**”) is a demonstration of possibilities to consider the position and “silently” accept or not to discuss nor explicitly accept the position.

Shall the Committee for European Affairs **fail to approve** the draft position of the Slovak Republic without approving another position, a member of the Government is bound by the (original) draft position of the Slovak Republic.<sup>25</sup> This principle is analogous to the so-called “**Principle of Constructive Disagreement**”.

### ***Report on Matters Related to the EU Membership of the Slovak Republic***

The Government shall, via its members, **provide regular information to the Committee for European Affairs** on current issues that are discussed in the respective EU bodies they represent as members. The Government shall submit to the National Council by the end of March a report on matters related to the EU membership of the Slovak Republic for the previous calendar year, unless the National Council decides otherwise.

The Committee for European Affairs may at any time request the Government or an authorize member of the government to submit a report, obtain information, justification or explanation on matters related to Slovakia's membership in the European Union.<sup>26</sup>

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<sup>22</sup> § 58a of the Act of the National Council of the Slovak Republic no. 350/1996 Coll. on Rules of Procedure of the National Council of the Slovak Republic as amended

<sup>23</sup> Art. 2 (5) of the Constitutional Act no. 397/2004 Coll. on cooperation of the National Council of the Slovak Republic and the Slovak Republic in the European Union Affairs

<sup>24</sup> Art. 2 (4) of the Constitutional Act no. 397/2004 Coll. on cooperation of the National Council of the Slovak Republic and the Slovak Republic in the European Union Affairs

<sup>25</sup> Art. 2 (4) of the Constitutional Act no. 397/2004 Coll. on cooperation of the National Council of the Slovak Republic and the Slovak Republic in the European Union Affairs

<sup>26</sup> § 58a of the Act of the National Council of the Slovak Republic no. 350/1996 Coll. on Rules of Procedure of the National Council of the Slovak Republic as amended

### ***Department for European Affairs***

For the execution of the scope of responsibilities of the National Council within the EU affairs the Office of the National Council has set up the Department for European Affairs who prepares the expert background papers for meetings of the Committee for European Affairs.